(1988) 10 P&H CK 0102

In the Punjab And Haryana At Chandigarh

Case No : Civil Revision No. 2385 of 1985

The State of Punjab — APPELLANT

Vs

M/s. British Motor Car Co. and others — RESPONDENT

Date of Decision : 04-10-1988

Acts Referred:
Punjab General Sales Tax Act, 1948 — Section 11B

Citation : (1988) 10 P&H CK 0102

Hon'ble Judges : D.V. Sehgal, J

Bench : Single Bench

Advocate : Inderpartap Singh, for the Appellant; H.L. Sarin, Mr. M.L. Sarin, Miss Ritu Bahri and Miss Jaishree Thakur, for the Respondent

Final Decision : Allowed

Judgement

D.V. Sehgal, J.—This revision petition by the State of Punjab is directed against an order dated 4-5-1985, passed by the learned Senior Sub Judge Patiala. An application filed by the Petitioner for the payment to it a sum of Rs. 33,278/-out of sale proceeds as a result of auction of the property of the judgment debtor Respondent Nos 2 and 3, has been declined, by the impugned order.

2. The facts in brief are that M/s. British Motor Car Company (1934) Ltd Respondent No. 1 secured a decree against Respondents No. 1 and 3 for recovery of Rs. 1,54,887/- with costs and interest at the rate of 12% per annum from 13-3-1981 till the recovery of the amount from the Court of the Sub Judge Ist Class, Jalandhar on 3-5-1982. The decree for execution was transferred to the Court of the learned Senior Sub Judge Patiala. In execution of the same the property of Respondent Nos. 1 and 2 was sold. Sale proceeds to the tune of Rs. 1,71,000/-were deposited by the auction purchasers with executing Court. The Petitioner stakes its claim for payment of Rs. 33,978/- out of the same on the ground that Respondent Nos. 2 and 3 were liable to payment of sales tax as assessed for the year 1971-72 to 1975-76. Order of assessment had been passed much before the decree u/s and attachment of the property. Even the

summons for attachment and recovery of this amount as arrears of land revenue had been issued on 2-3-1981 by the Assistant Collector-cum-District Excise and Taxation Officer, Patiala, addressed to Respondent Nos. 2 and 3 and then warrants of arrest were issued on March 13,1981. All these events took place before the decree dated 3-5.1982 had been passed in favour of Respondent No. 1. As already mentioned above, the prayer of the Petitioner was, however, not allowed by the learned executing court.

3. On hearing the learned Counsel for the parties, I am of the considered view that this petition ought to be allowed. The State of Punjab has a right to claim priority over the other secured or unsecured creditors of Respondent Nos. 2 and 3 to recover the amount of arrears of sales tax. Section 11-B of the Punjab Genera] Sales Tax Act 1948 lays down that the amount of any tax and penalty imposed under the said Act which remains unpaid after the due date is recoverable as arrears of land revenue. As noticed above, the proceedings to that effect had been taken by the Assistant Collector. Summonses and warrants had also been issued by him before the decree in favour of Respondent No. 1 had been passed. The liability of the assets of Respondent Nos. 2 and 3 to satisfy this demand of arrears of sales tax has first to be met with before the proceeds of the sale of their property are appropriated towards the decree secured by Respondent No. 1 in its favour.

4. Consequently, I allow this revision petition, set aside the order dated 4-5-1985 of the learned Senior Sub Judge, Patiala, without any orders as to costs. I allow the application of the Petitioner. The executing court is directed to make to the Petitioner payment of Rs. 33,978/-which has been retained out of the said proceeds to the Petitioner towards, satisfaction of the demand of the arrears of sales tax.

